

September 5, 2017

COUNCIL OF THE CITY OF FORT COLLINS, COLORADO

Council-Manager Form of Government

Regular Meeting – 6:00 PM

● **ROLL CALL**

PRESENT: Martinez, Stephens, Summers, Overbeck, Troxell, Cunniff, Horak
Staff Present: Atteberry, Daggett, Jensen

● **AGENDA REVIEW: CITY MANAGER**

City Manager Atteberry stated there were no changes to the published agenda.

● **CITIZEN PARTICIPATION**

Eric Sutherland discussed the five pre-election contests challenging the form and content of ballot questions that have been filed in Larimer County District Court. He stated the City needs to add three characters to its ballot language for the November election in order to eliminate conflict with the TABOR amendment.

● **CITIZEN PARTICIPATION FOLLOW-UP**

Mayor Troxell stated Council has dealt with the ballot issue and the Court found in favor of the City in its ruling yesterday.

● **CONSENT CALENDAR**

Mayor Troxell opened the public hearing for the following items: Item No. 14, *Items Relating to the Newton First Annexation*, No. 15, *Public Hearing and First Reading of Ordinance No. 122, 2017, Amending the Zoning Map of the City of Fort Collins and Classifying for Zoning Purposes the Property Included in the Newton First Annexation to the City of Fort Collins, Colorado, and Approving Corresponding Changes to the Sign District Map*, No. 16, *Items Relating to the Newton Second Annexation*, and No. 17, *Public Hearing and First Reading of Ordinance No. 124, 2017, Amending the Zoning Map of the City of Fort Collins and Classifying for Zoning Purposes the Property Included in the Newton Second Annexation to the City of Fort Collins, Colorado, and Approving Corresponding Changes to the Sign District Map*.

Eric Sutherland withdrew Item No. 9, *Second Reading of Ordinance No. 115, 2017, Amending Section 2-493 of the Code of the City of Fort Collins Regarding Duties of Municipal Judges*, and Item No. 20, *Resolution 2017-083 Appointing Kathleen M. Lane as Chief Judge of the Fort Collins Municipal Court and Authorizing the Fourteenth Addendum to Judge Lane's Employment Agreement*, from the Consent Agenda.

Mayor Troxell closed the public hearing for Item Nos. 14, 15, 16 and 17.

Mayor Pro Tem Horak made a motion, seconded by Councilmember Overbeck, to adopt and approve all items not withdrawn from the Consent Agenda.

RESULT:	CONSENT AGENDA ADOPTED [UNANIMOUS]
MOVER:	Gerry Horak, District 6
SECONDER:	Bob Overbeck, District 1
AYES:	Martinez, Stephens, Summers, Overbeck, Troxell, Cunniff, Horak

1. **Consideration and Approval of the Minutes of the August 8, 2017 Special Council Meeting, the August 15, 2017 Regular Council Meeting and the August 22, 2017 Adjourned Council Meeting. (Adopted)**

The purpose of this item is to approve the minutes from the August 8, 2017 Special Council meeting, the August 15, 2017 Regular Council meeting and the August 22, 2017 Adjourned Council meeting.

2. **Second Reading of Ordinance No. 105, 2017, Imposing a Moratorium Until December 31, 2017, Upon the Acceptance of Applications for the Installation of and/or the Issuance of Right-of-Way Permits for New Antennas, Small Cell Facilities, Towers and Wireless Service facilities by any Third Party in City Rights-of-Way in any Zone District. (Adopted)**

This Ordinance, unanimously adopted on First Reading on August 22, 2017, considers a moratorium until December 31, 2017, on the installation of cellular facilities in public rights-of-way. This would allow the City time to draft and implement appropriate regulations on such installations while still complying with HB 17-1193, which expanded the right of companies to utilize the right of way for small cell installations.

3. **Second Reading of Ordinance No. 106, 2017, Appropriating Unanticipated Grant Revenue in the Recreation Fund for the Vida Sana Program. (Adopted)**

This Ordinance, unanimously adopted on First Reading on August 15, 2017, appropriates subgrant funds in the amount of \$18,451 from the Colorado Department of Public Health and Environment, through the Poudre Valley Health Systems' Community Health Improvement Department. The Vida Sana Grant will address the needs of targeted health disparate populations in Fort Collins by allowing specific discounted programming cost for Northside Aztlan Community Center exercise programs.

4. **Second Reading of Ordinance No. 107, 2017, Appropriating Unanticipated Grant Revenue in the General Fund and Transferring Funds from the Community Development and Neighborhood Services Operating Budget to the Grant Budget for the Restorative Justice Program. (Adopted)**

This Ordinance, unanimously adopted on First Reading on August 15, 2017, appropriates grant revenue to fund Restorative Justice Services within Community Development and Neighborhood Services. A grant in the amount of \$67,612 has been received from the Colorado Division of Criminal Justice Juvenile Diversion fund for the continued operation of Restorative Justice Services, which includes the RESTORE program for shoplifting offenses, and the Restorative Justice Conferencing Program for all other offenses. The grant period for is July 1, 2017, to June 30, 2018. This is the first year in a 3-year cycle for the Juvenile Diversion grant.

5. **Items Relating to Additional Allocations of Funding to Projects Funded in 2017 Spring Cycle of the Competitive Process for Allocating City Financial Resources to Affordable Housing and Community Development Activities Utilizing Funds from the Federal Community Development Block Grant Program, Federal HOME Investment Partnerships Program, the City's Affordable Housing Fund Program and the City's Human Services Program (HSP). (Adopted)**

A. Second Reading of Ordinance No. 109, 2017, Appropriating Unanticipated Revenue in the Community Development Block Grant Fund.

B. **Second Reading of Ordinance No. 110, 2017, Appropriating Unanticipated Revenue in the HOME Investment Partnerships Fund.**

These Ordinances, unanimously adopted on First Reading on August 15, 2017, appropriate the additional funding received from the Department of Housing and Urban Development (HUD) for 2017 and distribute the final funding allocations proportionately in accordance with the Community Development Block Grant Commission's (CDBG) recommendations. This will complete all funding allocations related to the 2017 Spring Cycle of to Competitive Process.

6. **Second Reading of Ordinance No. 111, 2017, Annexing the Property Known as the Interstate Land Holdings Annexation to the City of Fort Collins, Colorado. (Adopted)**

This Ordinance, unanimously adopted on First Reading on August 15, 2017, annexes an area of approximately 12.139 acres in southeast Fort Collins. The property is situated on the northwest corner of the I-25 and Carpenter Road intersection.

7. **Second Reading of Ordinance No. 112, 2017, Amending the Zoning Map of the City of Fort Collins and Classifying for Zoning Purposes the Property Included in Interstate Land Holdings Annexation to the City of Fort Collins, Colorado and Approving Corresponding Changes to the Sign District Map. (Adopted)**

This item is a quasi-judicial matter and if it is considered on the discussion agenda it will be considered in accordance with the procedures described in Section 1(d) of the Council's Rules of Meeting Procedures adopted in Resolution 2017-017.

This Ordinance, unanimously adopted on First Reading on August 15, 2017, zones the properties included in the Interstate Land Holdings annexation into the General Commercial (CG) and Public Open Lands (POL) zone districts. The property is situated on the northwest corner of the I-25 and Carpenter Road intersection.

8. **Second Reading of Ordinance No. 114, 2017, Repealing Article III of Chapter 15 of the Code of the City of Fort Collins Relating to Amusement Devices and Places. (Adopted)**

This Ordinance, unanimously adopted on First Reading on August 15, 2017, repeals Article III of Chapter 15 of City Code to remove a license requirement on amusement devices and places, including but not limited to, pool tables, roller skating rinks, shooting galleries and electronic game devices. Once this Ordinance is adopted, the Sales Tax Office will send a notification letter to businesses that in 2017 have held such a license as required under Article III of Chapter 15. The letter will contain information about the action taken by City Council with the Ordinance to repeal the section of the Code, what that means for the business and when it goes into effect.

9. **First Reading of Ordinance No. 119, 2017, Appropriating Prior Year Reserves in Anticipation of Grant Revenue From the State of Colorado Department of Homeland Security-Office of Emergency Management and Authorizing a Transfer to the Cultural Services Fund for the Art in Public Places Program for the Mulberry/Riverside/Myrtle Storm Sewer Project. (Adopted)**

The purpose of this item is to appropriate \$1,280,663 from prior year reserves in anticipation of grant revenue from the State of Colorado Department of Homeland Security-Office of Emergency Management (DHSEM) and authorizing transfers to the Cultural Services Fund for the Art in Public Places (APP) program. The grant will fund the construction of the Mulberry/Myrtle/Riverside Storm Sewer project to mitigate flooding.

10. **Items Relating to the North College Improvements Project–Canal to State Highway 1. (Adopted)**

- A. Resolution 2017-063 Authorizing the Mayor to Execute a Contract Amendment to the Intergovernmental Agreement Between the City and the Colorado Department of Transportation for the North College Improvements Project - Canal to State Highway 1.
- B. Resolution 2017-064 Authorizing the Mayor to Execute an Intergovernmental Agreement Between the City and Larimer County for the North College Improvements Project - Canal to State Highway 1.
- C. First Reading of Ordinance No. 092, 2017, Appropriating Unanticipated Grant Revenue from the Colorado Department of Transportation, and Appropriating Unanticipated Revenue from Larimer County in the Capital Projects Fund for the North College Improvements Project – Canal to State Highway 1 Project and for Transfer from the Capital Projects Fund to the Cultural Services and Facilities Fund for the Art in Public Places Program, and Appropriating Reserves from the Capital Expansion Fund for Transfer to the Capital Projects Fund for the North College Improvements Project – Canal to State Highway 1 Project and for Transfer to the Cultural Services and Facilities Fund for the Art in Public Places Program.
- D. First Reading of Ordinance No. 108, 2017, Authorizing the Acquisition by Eminent Domain of Certain Lands Necessary to Construct Public Improvements in Connection with the North College Improvements Project – Canal to State Highway 1.

The purpose of this item is the following for the North College Improvements Project – Canal to State Highway 1:

- Enable the City to receive additional federal grant and local matching funds by authorizing the Mayor to sign two intergovernmental agreements (IGA). The first IGA is with the Colorado Department of Transportation (CDOT) and the second IGA is with Larimer County.
- Appropriate \$810,000 in funding from a Federal Grant and Larimer County as well as appropriate \$400,000 in funding from the Transportation Capital Expansion Fee. These funds will be used for the design, property acquisition, and construction of the sidewalks and pedestrian bridges, and could include contributions to the overall roadway improvements.
- Obtain eminent domain authorization, if deemed necessary, to acquire property interests needed for construction improvements.

11. **Items Relating to the Horsetooth Road and College Avenue Intersection Improvements Project. (Adopted)**

- A. Resolution 2017-065 Authorizing the Mayor to Execute an Intergovernmental Agreement Between the City and the Colorado Department of Transportation for the Horsetooth Road and College Avenue Intersection Improvements Project.
- B. First Reading of Ordinance No. 093, 2017, Appropriating Unanticipated Grant Revenue From the North Front Range Metropolitan Planning Organization in the Capital Projects Fund for the Horsetooth Road and College Avenue Intersection Improvements Project.

The purpose of this item is to authorize the Mayor to sign an intergovernmental agreement (IGA) for the Horsetooth Road and College Avenue Intersection Improvements Project (the “Project”). The City and CDOT already have an IGA in place for the Project, however, the City and CDOT wish to execute a new IGA to add additional grant funds of \$32,000 and provisions for streamlined contract modifications using option letters. This IGA will replace the current Project IGA upon execution. This item will also appropriate funds for the design, right-of-way acquisition, and construction of the Project.

12. **First Reading of Ordinance No. 113, 2017, Amending Section 2-203 of the Code of the City of Fort Collins Relating to the Functions of the Cultural Resources Board. (Adopted)**

The purpose of this item is to update how the functions of the Cultural Resources Board (CuRB) are described to better reflect the actual scale and responsibilities of the Cultural Services Department. The current City Code language is outdated. It references advising the Museum director, and matters pertaining to the operations of the Lincoln Center. The Cultural Services Director, staff liaison to the CuRB, is responsible for directing the Lincoln Center, Museum of Discovery, Gardens on Spring Creek, Carnegie Creative Center, and Art in Public Places program. The proposed new language more accurately reflects the entire scope of functions currently performed by the Cultural Services Department.

13. **Items Relating to the Newton First Annexation. (Adopted)**

- A. Resolution 2017-081 Setting Forth Findings of Fact and Determinations Regarding the Newton First Annexation.
- B. Public Hearing and First Reading of Ordinance No. 121, 2017, Annexing the Property Known as the Newton First Annexation to the City of Fort Collins, Colorado.

The purpose of this item is to annex 0.07 acres located at 1516 West Vine Drive, between North Shields Street and North Taft Hill Road. The Initiating Resolution was adopted on consent, July 18, 2017. The Newton First Annexation is the first of two sequential annexations, which are as follows: Newton First - 0.0703 acres; Newton Second - 1.3760 acres; Newton Annexation total area: 1.4463 acres. A related item to zone the annexed property is presented as the next item on this Agenda.

14. **Public Hearing and First Reading of Ordinance No. 122, 2017, Amending the Zoning Map of the City of Fort Collins and Classifying for Zoning Purposes the Property Included in the Newton First Annexation to the City of Fort Collins, Colorado, and Approving Corresponding Changes to the Sign District Map. (Adopted)**

This item is a quasi-judicial matter and if it is considered on the discussion agenda it will be considered in accordance with the procedures described in Section 1(d) of the Council's Rules of Meeting Procedures adopted in Resolution 2017-017.

The purpose of this item is to zone the property included in the Newton First Annexation into the Urban Estate (UE), zone district.

15. **Items Relating to the Newton Second Annexation. (Adopted)**

- A. Resolution 2017-082 Setting Forth Findings of Fact and Determinations Regarding the Newton Second Annexation.
- B. Public Hearing and First Reading of Ordinance No. 123, 2017, Annexing the Property Known as the Newton Second Annexation to the City of Fort Collins, Colorado.

The purpose of this item is to annex 1.3760 acres located at 1516 W Vine Drive in-between N. Shields Street and N. Taft Hill Road. The Initiating Resolution was adopted on consent, July 18, 2017. The Newton Second Annexation is the second of two sequential annexations, which are as follows: Newton First - 0.0703 acres; Newton Second - 1.3760 acres; Newton Annexation total area: 1.4463 acres. A related item to zone the annexed property is presented as the next item on this Agenda.

16. **Public Hearing and First Reading of Ordinance No. 124, 2017, Amending the Zoning Map of the City of Fort Collins and Classifying for Zoning Purposes the Property Included in the Newton Second Annexation to the City of Fort Collins, Colorado, and Approving Corresponding Changes to the Sign District Map. (Adopted)**

This item is a quasi-judicial matter and if it is considered on the discussion agenda it will be considered in accordance with the procedures described in Section 1(d) of the Council's Rules of Meeting Procedures adopted in Resolution 2017-017.

The purpose of this item is to zone the property included in the Newton Second Annexation into the Urban Estate (UE), zone district.

17. **First Reading of Ordinance No. 125, 2017, Designating the McCarty/Sheely/Dreher Property, 1300 West Mountain Avenue, Fort Collins, Colorado, as a Fort Collins Landmark Pursuant to Chapter 14 of the Code of the City of Fort Collins. (Adopted)**

This item is a quasi-judicial matter and if it is considered on the discussion agenda, it will be considered in accordance with the procedures described in Section 1(e) of the Council's Rules of Meeting Procedures adopted in Resolution 2017-017.

The purpose of this item is to consider the designation of the McCarty/Sheely/Dreher Property, located at 1300 West Mountain Avenue, as a Fort Collins Landmark. The owners of this property, Anthony and Heather McNeill, have submitted this application requesting consideration of the property for such designation.

18. **First Reading of Ordinance No. 126, 2017 Authorizing the Conveyance of a Permanent Utility Easement and a Temporary Construction Easement on City Property Located at 625 9th Street to Public Service Company of Colorado. (Adopted)**

The purpose of this item is to authorize the conveyance of easements to Public Service Company of Colorado d/b/a Xcel Energy. The easements are needed relating to the Xcel Energy project to provide Compressed Natural Gas for City vehicles, to the City Streets Department, located at 625 9th Street in Fort Collins.

● **END CONSENT**

● **CONSENT CALENDAR FOLLOW-UP**

Councilmember Martinez requested additional information regarding Item No. 8, *Second Reading of Ordinance No. 114, 2017, Repealing Article III of Chapter 15 of the Code of the City of Fort Collins Relating to Amusement Devices and Places*. City Manager Atteberry replied this Code section has been around for decades and is a fee on pinball machines, billiard tables, and other amusement devices. This Ordinance eliminates that section of the Code and was supported by staff and the Council Finance Committee.

Mayor Pro Tem Horak discussed Item No. 11, *Items Relating to the North College Improvements Project-Canal to State Highway 1*. He stated this item appropriates funds to complete the thousand feet of frontage without sidewalks or bicycle lanes.

● **COUNCILMEMBER REPORTS**

Councilmember Overbeck reported on the Engagement Event Showcase, held by the Poudre Heritage Alliance. He stated Council received a memo from the Human Relations Commission regarding a neo-Nazi hate flyer found in town, noting hatred and racism are in contrast to the values of the City of Fort Collins.

Councilmember Stephens reported on a Housing Catalyst groundbreaking event on the former land bank property and a grand opening for the Village on Redwood, a new affordable housing project. She echoed Councilmember Overbeck's comments on equity.

Mayor Pro Tem Horak reported on a letter he received from a 6-year-old regarding Sunday bus service.

Mayor Troxell reported on recent large community events including New West Fest, the first game in the new on-campus stadium, Tour de Fat, and the Fortitude race.

- **CONSIDERATION OF COUNCIL-PULLED CONSENT ITEMS**

- **DISCUSSION ITEMS**

19. **Consideration of an Appeal of the Planning and Zoning Board Decision on June 15, 2017, Approving the Crowne at Old Town North Project Development Plan 170007. (Planning and Zoning Board Decision Upheld, with conditions)**

The purpose of this item is to consider an appeal of the June 15, 2017, Planning and Zoning Board (Board) decision approving the Crowne at Old Town North Project Development Plan. The appeal was filed on June 28, 2017.

The appeal alleges the following fair hearing and failure to properly interpret and apply issues:

Fair Hearing Issues Alleged:

- *Failure to conduct a fair hearing in that the recommendation of approval made by staff constituted grossly misleading evidence considered by the Board and relevant to its findings.*
- *Failure to conduct a fair hearing in that the Board was not provided with enough information regarding the concerns of the appellant prior to or during the hearing which resulted in a failure to receive all relevant evidence offered by the appellant.*
- *Failure to conduct a fair hearing in that the Board did not inquire further about the allegation raised by the appellant. Instead, the Board relied on staff's recommendation of approval which shows that the Board has a close relationship with staff that interfered with their independent judgment and resulted in bias against the appellant.*

Failure to Properly Interpret and Apply Issue Alleged:

- *Failure to properly interpret and apply Land Use Code (Code) Section 3.2.2(C)(4)(b). The appellant alleges the project did not provide sufficient enclosed bicycle parking.*

Mayor Troxell noted this is a quasi-judicial matter.

City Attorney Daggett provided an overview of the appeal process and stated the subject matter of the appeal is limited to the issues identified in the notice of appeal. She noted new evidence related to the allegations in the notice of appeal may be allowed.

Eric Sutherland, appellant, and Lucia Liley, attorney for the applicant, identified themselves.

Mayor Troxell outlined the time allotments for presentations and rebuttals.

Tom Leeson, Community Development and Neighborhood Services Director, discussed The Crowne at Old Town North proposal, stating the site is located near the intersection of Conifer

Street and College Avenue and includes 304 multi-family units in 9 buildings. The Planning and Zoning Board voted 5-0 to approve the project. Leeson discussed the appellant's allegations.

Mr. Sutherland objected to a slide presented by Mr. Leeson regarding bicycle parking. Mr. Leeson replied the material is part of the record and is on the site plan.

Mayor Troxell asked Councilmembers to discuss any observations made at the site visit. Councilmember Overbeck stated he observed the property from Conifer Street and a discussion regarding the bike parking locations occurred. Mayor Troxell stated he looked at a site plan and participated in the discussion regarding the bike parking location.

Mayor Troxell asked if any parties-in-interest have procedural issues to address. Mr. Sutherland replied the City Code does not make a provision for an applicant to be represented by legal counsel. He questioned what criteria Council intends to use to determine whether the facts presented support the allegations. He also questioned the responsibility of the burden of proof.

City Attorney Daggett stated representation by legal counsel is not expressly addressed in the Code because it is an accepted matter of law; therefore, an express authorization has never been seen as being needed.

Mr. Sutherland stated express authorization for representation of litigants in the Municipal Court did not even exist until a couple of months ago. Therefore, there is a history of adopting authorization for legal counsel.

Ms. Liley stated it is a universal practice to allow licensed attorneys to stand in place of a party in a proceeding such as this. She noted it is usually a designated representative of the applicant who gives these types of presentations.

Councilmember Cunniff noted applicants are frequently corporate entities; therefore, legal representation is common.

Mayor Pro Tem Horak stated it is up to the applicant to choose the appropriate person to speak and represent them.

Given the input, Mayor Troxell stated attorney representation is allowable.

Mayor Troxell requested input regarding Mr. Sutherland's comments on the burden of proof. City Attorney Daggett replied the burden of persuasion has been typically placed on the appellant.

Mr. Sutherland stated this proceeding is quasi-judicial and discussed the meaning of that term.

Ms. Liley stated the City's appeal process is quite clear in stating Council shall consider an appeal based on the record, the relevant provisions of the Code and Charter, the grounds for appeal, and the arguments made at the appeal.

Councilmember Martinez stated the criteria are very clear.

Given the input, Mayor Troxell stated the burden of proof and persuasion falls on the appellant.

APPELLANT PRESENTATION

Mr. Sutherland stated the ultimate enforcement officials of the Land Use Code are community citizens, yet the process for citizens to preserve their quality of life in the face of new development is difficult.

Regarding the development and his allegations, he stated there is no place in the proposal that is less accessible to walkways and pathways than balconies of third-story apartments. The PDP did not show design intent to comply with the Land Use Code requirements related to enclosed bicycle parking, as balconies should not be counted as acceptable for that requirement. Mr. Sutherland also stated the absence of an attempt to utilize alternative compliance in this situation speaks to the reality of the legislative intent.

Mr. Sutherland also stated the relationship between staff and the Planning and Zoning Board is too close.

APPLICANT PRESENTATION

Ms. Liley briefly discussed the proposed project and stated it will complete many important segments of the overall area street network, including Suniga Drive from Aspen Heights to College, and Lupine Drive to College Avenue. Regarding the bicycle parking requirements, she stated the project needs 60%, or 318, enclosed spaces, and 40%, or 211, fixed racks. The applicant counted 284 spaces on ground-floor patios and on upper balconies of all units except studios, because this is the preference of many residents. Ms. Liley stated balconies can be reasonably interpreted as bicycle parking under the specific Code language and have been used as such in other projects. She stated the applicant is prepared to offer a plan which does not include counting balconies as enclosed bicycle parking spaces.

Mr. Sutherland objected to the introduction of new evidence. Ms. Liley replied she is not introducing evidence but is offering a condition. She stated Council is specifically authorized to modify an portion of a Planning and Zoning Board decision with a condition.

Mayor Troxell overruled the objection.

Ms. Liley discussed the other appeal allegations and requested Council find the Board conducted a fair hearing and modify the decisions with a condition that the project's FDP provide the required 60% of enclosed bike parking using garage spaces or interior corridors.

APPELLANT REBUTTAL

Mr. Sutherland stated it is impossible for Council to consider a condition without receiving new evidence.

APPLICANT REBUTTAL

Regarding the condition offered, Ms. Liley stated the Code specifically authorizes Council to approve such conditions.

COUNCIL DISCUSSION

Councilmember Cunniff agreed staff's written presentation should not include anything not in the record; therefore, Council should not consider that as part of its consideration tonight. He asked if the applicant has made an offer to modify any portions of its proposal. Leeson replied the applicant did submit a minor amendment application subsequent to the approval which amends the enclosed bicycle parking to be accommodated entirely on the ground level. The minor amendment has not been processed given this pending appeal.

Councilmember Cunniff asked if staff has an opinion about the conformance of this new proposal with the Land Use Code. Leeson replied staff believes it meets the intent of the Code.

Councilmember Cunniff made a motion, seconded by Councilmember Martinez, to find that the Planning and Zoning Board conducted a fair hearing in its consideration of The Crowne at Old Town North, PDP #170007, and did not consider evidence relevant to its decision that was substantially false or grossly misleading, did not improperly fail to receive all relevant evidence offered by the appellant and was not biased against the appellant by reason of a conflict of interest or other close business, personal, or social relationship that interfered with the Board's independent judgement, and further moved that, based on the evidence in the record and presented at this hearing, the appeal alleging that the Board did not conduct a fair hearing is hereby found to be without merit and is denied.

Councilmember Cunniff stated he is persuaded that staff's opinion is not intentionally misleading and the Board did its job appropriately, as required by the Code, with the evidence presented.

Councilmember Martinez stated there is no foundation for the appeal.

RESULT:	APPEAL ALLEGATIONS FOUND TO BE WITHOUT MERIT [UNANIMOUS]
MOVER:	Ross Cunniff, District 5
SECONDER:	Ray Martinez, District 2
AYES:	Martinez, Stephens, Summers, Overbeck, Troxell, Cunniff, Horak

Councilmember Cunniff made a motion, seconded by Mayor Pro Tem Horak, to find the Planning and Zoning Board properly interpreted and applied the provisions of Land Use Code Section 3.2.2(c)(4)(b) regarding adequate bicycle parking, and to approve The Crowne at Old Town North PDP #170007 as approved by the Planning and Zoning Board with the following additional conditions: that the redesign proposed by the applicant adding enclosed bicycle parking spaces on the ground level next to entrances and walkways and in the garage and hallways shall be added to the approved PDP, and further moved that, except as so stated, based on the evidence in the record and presented at this hearing, the appeal is found to be without merit and is denied.

Councilmember Cunniff stated he does not agree balconies, which are only accessible to the owner, are a public amenity.

Councilmember Stephens asked if bicycles will be placed in hallways as part of the redesign. Clay Frickey, City Planner, replied the parking will be at hallway junctions and right off the entries.

Councilmember Summers noted balconies can still be used and questioned if this condition creates an additional modification and expense that may potentially be punitive.

Councilmember Cunniff stated one of his concerns with third and fourth floor balcony parking relates to tenants' potential mobility issues.

Councilmember Stephens stated she would support the condition and suggested examining the Land Use Code allowance of balconies as enclosed parking.

City Attorney Daggett clarified the motion language.

Ms. Liley stated the applicant has no objection to the condition and requested the motion state the Land Use Code requirements are met with the design change.

Councilmember Cunniff made an amendment to his motion to further find that the proposed redesign meets the applicable Land Use Code requirements. Mayor Pro Tem Horak accepted the amendment.

RESULT:	PLANNING AND ZONING BOARD DECISION UPHELD, WITH CONDITION [UNANIMOUS]
MOVER:	Ross Cunniff, District 5
SECONDER:	Gerry Horak, District 6
AYES:	Martinez, Stephens, Summers, Overbeck, Troxell, Cunniff, Horak

Mayor Troxell closed the hearing.

(Secretary's Note: The Council took a brief recess at this point in the meeting.)

20. **Second Reading of Ordinance No. 116, 2017, Amending Chapter 26 of the Code of the City of Fort Collins to Make Various Changes Related to the Raw Water Requirements, to Hereinafter Be Known as the "Water Supply Requirements."** (Adopted as Amended on Second Reading)

This Ordinance, adopted on First Reading on August 22, 2017, by a vote of 6-1 (Nays: Overbeck) amends the Utilities Raw Water Requirements (RWR). The RWR are a dedication of water rights or cash-in-lieu (CIL) of water rights to ensure that adequate water supply and associated infrastructure are available to serve the water needs of development. The three main changes are decreasing the amount of RWR, increasing the CIL rate and moving to a cash-focused system. These changes will increase development costs in the Utilities water service area, but are necessary for meeting the water needs of that development.

The draft ordinance has been revised to clarify the proposed implementation date of January 1, 2018, with such changes being: on page 1 in a new "whereas" clause; on page 8 as a new sentence in Code Section 26-150(b); and a new Section 14 of the ordinance. Staff has also corrected minor rounding errors in some of the values listed in the Ordinance.

Donnie Dustin, Water Resources Manager, discussed the staff recommendations and noted the recommended implementation date has been changed to January 1, 2018 and the term "raw water requirements" has been changed to "water supply requirements." Dustin showed the rates for Timnath and Wellington. Staff also recommends the changes to the raw water requirement and cash-in-lieu rate occur simultaneously.

Eric Sutherland stated the City is legislating as though it were an island.

Councilmember Overbeck asked about the City offering water at a discount to new developments. Dustin replied this is an impact fee; therefore, the market value for certain water rights cannot be charged.

Councilmember Overbeck asked how citizens can get involved the fee working group. Tiana Smith, Revenue and Project Manager, replied there will be ways for the organizations represented in the working group to provide feedback. Additionally, she stated she is communicating with another broader group.

Councilmember Cunniff asked if all the enterprise funds use plan-based assessments for fees. Dustin replied in the affirmative but noted there is also buy-in to existing infrastructure.

Mayor Pro Tem Horak made a motion, seconded by Councilmember Cunniff, to adopt Ordinance No. 116, 2017, on Second Reading.

Mayor Pro Tem Horak asked about the correct dollar figure for the implementation date.

(Secretary's Note: The Council took a brief recess at this point in the meeting.)

Lance Smith, Utilities Strategic Financial Manager, discussed the calculations and resulting dollar figure changes that would occur for a January implementation date.

City Attorney Daggett outlined the resulting Ordinance changes.

Mayor Pro Tem Horak and Councilmember Cunniff accepted the language changes as a friendly amendment.

RESULT:	ADOPTED AS AMENDED ON SECOND READING [UNANIMOUS]
MOVER:	Gerry Horak, District 6
SECONDER:	Ross Cunniff, District 5
AYES:	Martinez, Stephens, Summers, Overbeck, Troxell, Cunniff, Horak

21. **Items Relating to Short Term Rental Ordinance Amendments.** (Adopted as Amended on First Reading)

- A. *First Reading of Ordinance No. 127, 2017, Amending Chapter 15 of the Code of the City of Fort Collins Regarding Short Term Rental Licensing Regulations.*
- B. *First Reading of Ordinance No. 128, 2017, Amending the City of Fort Collins Land Use Code Short Term Rental Regulations.*

The purpose of this item is to consider Code amendment options to allow:

- *Short term rentals (STRs) that were in existence prior to March 31, 2017, but did not acquire sales and lodging tax licenses to apply for a STR license.*
- *A property in an allowable Primary STR zone to operate a Primary STR on an abutting property.*
- *A grandfathering provision for tenants who were operating a STR prior to March 31, 2017, with the property owner's permission to apply for a STR license.*

Ginny Sawyer, Policy and Project Manager, stated there are three potential amendment options: extending the deadline to allow a short-term rental to be grandfathered, looking at a property in a zone allowing a primary short-term rental to operate a primary on a property that abuts that property, and a grandfathering provision for tenants operating prior to March 31st with the

property owner's permission to also have the opportunity to get a license. Sawyer provided a background of the public outreach process and the work with Host Compliance to identify short-term rental operators.

Andrew Walter supported short-term rentals and discussed the financial benefits to the City.

Margaret Mitchell discussed the Planning and Zoning Board recommendation and opposed the placement of short-term rentals in residential neighborhoods.

Bill Fairbank stated the short-term rental issue was discussed openly and fairly for two years with ample opportunity for citizen input. He supported the existing ordinance and opposed grandfathering and any changes.

Kathryn Dubiel expressed concern about renters being allowed to operate primary and non-primary short-term rentals.

Mike Knowles discussed his agreement with the Planning and Zoning Board recommendations. He requested the existing Ordinance be upheld.

Paul Patterson opposed the proposed Ordinance changes.

Senesa Stinebaugh provided letters from her neighbors indicating her short-term rental has not had negative impacts on the neighborhood.

Eric Sutherland questioned whether the use by right of homeowners to operate a short-term rental has been taken away.

Sarah Ryan supported the extension of the grandfathering date and stated the expectations for both hosts and guests at primary short-term rentals are much higher than those for long-term renters.

Michelle Haeefele stated the existing Ordinance reflects a compromise that recognizes lodging buildings were never a use by right. She opposed the proposed changes.

Councilmember Cunniff asked how many other home occupation businesses are allowed to take over adjacent houses in residential zones. Ted Shepard, Chief Planner, replied the home occupation license requires that no more than 50% of the home be devoted to the business. Per the City Attorney's Office, a short-term lease is still a residential use and is not considered a home occupation.

Councilmember Martinez asked if Council provided clear direction for these changes at the Council work session. Sawyer replied it was mentioned in the discussion.

Councilmember Martinez clarified the definition of abutting property and stated he is struggling with renters being allowed to operate primary short-term rentals.

Mayor Pro Tem Horak made a motion, seconded by Mayor Troxell, to adopt Ordinance No. 127, 2017, on First Reading.

Mayor Pro Tem Horak stated this item was discussed in public at the work session and supported the consideration of these amendments.

Councilmember Cunniff stated he supported the original Ordinance and was not in favor of any changes at the work session; however, in the interest of gaining agreement on an Ordinance more in line with citizens' requests, he would support a version that only changes the grandfathering date.

Councilmember Stephens supported extending the grandfathering date.

Councilmember Overbeck stated he could support that single change.

Councilmember Summers supported extending the grandfathering date.

Mayor Troxell supported extending the grandfathering date and allowing tenants to operate short-term rentals.

Mayor Pro Tem Horak supported not including the abutting properties change.

Councilmember Cunniff asked how documentation of a tenant-operated short-term rental would occur. Sawyer replied this activity is being identified through Host Compliance and advertising.

After discussion, Mayor Pro Tem Horak stated he would like to move for adoption of an Ordinance that excludes the changes for abutting properties and renters.

(Secretary's Note: The Council took a brief recess at this point in the meeting.)

City Attorney Daggett discussed the necessary language changes made to the Ordinance. Mayor Pro Tem Horak and Mayor Troxell accepted the modified language.

Councilmember Overbeck stated he cannot support the motion at this point.

Councilmember Cunniff stated he would support the motion as it is important to observe the integrity of the Land Use Code.

Councilmember Overbeck stated he would like to see additional public input.

RESULT:	ORDINANCE NO. 127, 2017 ADOPTED AS AMENDED ON FIRST READING [6 TO 1]
MOVER:	Gerry Horak, District 6
SECONDER:	Wade Troxell, Mayor
AYES:	Martinez, Stephens, Summers, Troxell, Cunniff, Horak
NAYS:	Overbeck

Mayor Pro Tem Horak made a motion, seconded by Councilmember Cunniff, to adopt Ordinance No. 128, 2017, as amended, on First Reading.

City Attorney Daggett reviewed the necessary language changes made to the Ordinance, which were accepted by Mayor Pro Tem Horak and Councilmember Cunniff.

RESULT:	ADOPTED AS AMENDED ON FIRST READING [6 TO 1]
MOVER:	Gerry Horak, District 6
SECONDER:	Ross Cunniff, District 5
AYES:	Martinez, Stephens, Summers, Troxell, Cunniff, Horak
NAYS:	Overbeck

22. Public Hearing and Resolution 2017-084 Approving the Consolidated Service Plan for Waters' Edge Metropolitan District Nos. 1, 2, 3, 4 and 5. (Postponed Indefinitely)

The purpose of this item is to consider the Waters' Edge Metropolitan District Nos. 1-5 Service Plan. The intent of the proposed Waters' Edge Metropolitan District Nos. 1-5 (jointly, the Districts) is to finance, construct, operate and maintain a number of improvements within the Waters' Edge development, including: a non-potable water system, parks and recreation amenities (notably a community center and a sustainability center), and other resident amenities.

Although the application does not comply with the City's policy on metropolitan districts in a number of areas, staff is supportive of the application as an exemption for Council's consideration in light of the development's community outcomes, such as a non-potable water system resulting in reduced treated water requirements, community facilities, and enhanced open space and trails.

Patrick Rowe, Redevelopment Coordinator, stated a metropolitan district is a quasi-governmental entity which has the ability to levy property taxes, impose fees, issue debt such as bonds, construct public improvements, and provide authorized services. He discussed the Waters' Edge development, located just north of the Country Club, and detailed the proposed improvements to be completed as part of this metro district, including a non-potable water system and restoration of the No. 8 Ditch. He noted the service plan specifically excludes the power of eminent domain proceedings.

Rowe stated the developer intends for the District to exist in perpetuity to provide services in lieu of a homeowners association. He noted the proposal for this District is not compliant with the City's Metro District policy as it currently stands; however, it does provide public infrastructure and amenities that go beyond what is typically required of a City development.

Jim Miles, Hearthfire HOA, supported the formation of the Waters' Edge Metro District; however, he requested its inclusions be specifically limited to Waters' Edge wholly owned and operated amenities.

Joe Knopinski, Waters' Edge Metro District applicant, stated an election needs to occur this November for the formation of the District and discussed the advantages of the District.

Bill Swalling, Waters' Edge general partner, stated this District is innovative and implements City Plan through creative financing for enhancements above and beyond basics.

MaryAnn McGeady, attorney representing the Metro District organizers, discussed her history of working with Metro Districts.

Sam Sharp, investment banker for the proposed District, noted the mill levy cap insulates any of the risk of development from the taxpayer and stated he has never seen a Metro District have a negative impact on cities' ratings.

Councilmember Summers asked about the eligible electors for setting up the initial District structure. Tom Leeson, Community Development and Neighborhood Services Director, replied the eligible electors are the property owners at the time of the election, which would be Mr. Swalling and his company as of this November.

Councilmember Summers asked if the mill levy has been analyzed in terms of expense to homeowners. Rowe replied there is a cap on the mill levy and discussed the proposed amenities. He noted the debt service portion is well thought-out and supported by the financial plan.

Councilmember Overbeck asked Mr. Sharp how many of Aurora's metro districts have substandard ratings. Mr. Sharp replied most metro districts start as a below investment grade credit-rated borrower and become investment grade as they build out. Most top out at a BBB or A rating. He stated he does not know of any that have been downgraded.

Councilmember Overbeck asked about traffic, once this development is built out. Martina Wilkinson, Traffic Operations, replied the approval process in terms of the traffic-related component is only for the western portion of the development. The development is improving a large section of Turnberry Road, building a signal at Country Club and Turnberry, providing \$250,000 toward signalization at Vine and Timberline, and paying \$1.5 million in street oversizing fees for regional improvements.

Councilmember Overbeck asked about the status of the Vine and Lemay intersection. City Manager Atteberry replied he just received a briefing on the topic; however, he is not prepared to speak publicly about that.

Councilmember Overbeck asked how rates for community use of the common facilities will be determined. Rowe replied Metro Districts are subject to many of the same governmental requirements in terms of reporting. Ms. McGeady replied, because the District is a political subdivision and quasi-municipal corporation, it has the same constitutional requirements about setting fees that are reasonably related to the cost of service provided.

Councilmember Overbeck expressed concern not enough details have been presented regarding the equitable accessibility of common facilities. Ms. McGeady replied residents also need to be assured they are not subsidizing other users, given the property tax funding.

Mr. Swalling stated the most important parts of metro districts involve community connections and are, by nature, more inclusive than HOAs.

Councilmember Overbeck asked if rooftop solar is an option for this development. Mr. Swalling discussed the proposed solar proposal for the development. He noted geothermal may be possible on the east side of the development.

Councilmember Cunniff asked what the developer fees will fund. Rowe replied the developer fees are another source of funding for the Metro District. They approximately mimic impact fees.

Councilmember Cunniff asked how much of the \$31 million would be covered by developer fees with the proposed 848 units. Rowe replied the applicant is preserving that as a revenue source, but is not necessarily anticipating how it will be used.

Councilmember Cunniff asked why 50 mills of debt service is needed. Mr. Knopinski replied the system development fee is not anticipated to be charged in the first phase, though it is a standard metro district fee. In addition to the 50 mills, there may need to be charges for service given the anticipated level of service. He noted the market may not bear the 50 mills, however.

Councilmember Stephens asked if there is bus and/or Dial-a-Ride service to the area. Leeson replied there is not currently bus service; however, the upcoming Transit Plan Update will address this part of town.

Councilmember Stephens asked about the proximity of health care facilities. Leeson replied there would be an opportunity for a health care facility in the commercial district or future commercial districts.

Councilmember Stephens asked if any affordable housing units were ever considered. Mr. Swalling replied the west side has a blend of housing types and the east side is planned to be walkable with commercial aspects. He stated he has been working with Partnership for an Age-Friendly Community and many ideas regarding affordable housing have been discussed.

Councilmember Cunniff made a motion, seconded by Councilmember Stephens, to postpone indefinitely consideration of Resolution 2017-084.

Councilmember Cunniff noted the Metro District policy will be reviewed in the near future and stated he does not want what sounds like a nice project to weigh policy-making decisions. He stated his calculations are that the District could be created with 41 mills of debt service.

Councilmember Stephens stated this deviates too far from the City Metro District Policy.

Councilmember Overbeck stated he would have liked to have had a work session on this item and agreed with Councilmembers Cunniff and Stephens.

Mayor Troxell stated he would oppose the motion.

RESULT:	RESOLUTION 2017-084 POSTPONED INDEFINITELY [5 TO 2]
MOVER:	Ross Cunniff, District 5
SECONDER:	Kristin Stephens, District 4
AYES:	Stephens, Summers, Overbeck, Cunniff, Horak
NAYS:	Martinez, Troxell

Motion to Extend the Meeting past 10:30 PM

Mayor Pro Tem Horak made a motion, seconded by Councilmember Cunniff, to extend the meeting past 10:30 PM, but not past 12:00 AM, to consider any remaining scheduled items of business.

RESULT:	DEFEATED [3 TO 4]
MOVER:	Gerry Horak, District 6
SECONDER:	Ross Cunniff, District 5
AYES:	Stephens, Overbeck, Troxell
NAYS:	Martinez, Summers, Cunniff, Horak

● **CONSIDERATION OF CITIZEN-PULLED CONSENT ITEMS**

23. **Second Reading of Ordinance No. 115, 2017, Amending Section 2-493 of the Code of the City of Fort Collins Regarding Duties of Municipal Judges. (Postponed to September 12, 2017)**

This Ordinance, unanimously adopted on First Reading on August 15, 2017, sets out the duties of the Municipal Judges as referenced in Article VII, Section 1, of the City Charter.

POSTPONED TO SEPTEMBER 12, 2017

24. **Resolution 2017-083 Appointing Kathleen M. Lane as Chief Judge of the Fort Collins Municipal Court and Authorizing the Fourteenth Addendum to Judge Lane's Employment Agreement. (Postponed to September 12, 2017)**

The purpose of this item is to appoint existing Judge Kathleen M. Lane as Chief Judge and authorize the Fourteenth Addendum to Judge Lane's employment agreement.

POSTPONED TO SEPTEMBER 12, 2017

● **ADJOURNMENT**

Motion to Adjourn to September 12, 2017


Mayor Pro Tem Horak made a motion, seconded by Councilmember Cunniff, to adjourn to 6:00 PM, Tuesday, September 12, 2017 to consider the remaining items from this agenda together with such other items as may come before the Council.

RESULT: ADOPTED [UNANIMOUS]
MOVER: Gerry Horak, District 6
SECONDER: Ross Cunniff, District 5
AYES: Martinez, Stephens, Summers, Overbeck, Troxell, Cunniff, Horak

The meeting adjourned at 11:15 PM.


Mayor

ATTEST:


City Clerk

